IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WA.No. 1058 of 1999(A)

AGAINST THE JUDGEMENT IN OP.3593/1996 Dated 07/04/1999

APPELLANTS: PETITIONERS 1 TO 10:

1. VARKEY MATHEW, AGED 56 YEARS, S/O.MATHEW,
NIRAWATH HOUSE, VATTAYAR P.O.,
PEECHAD, DEVIKULAM.

2. N.M.JOHNSON, AGED 29 YEARS, S/O.VARKEY,
NIRAWATH HOUSE, VATTAYAR P.O., DEVIKULAM.

3. N.V.SIMON, AGED 28 YEARS, S/O.VARKEY,
NELLITHANAM ESTATE, VATTAYAR P.O.,
PEECHAD, DEVIKULAM.

4. P.J.GEORGE, AGED 57 YEARS, S/O.JOSEPH,
PULIKKAL VEEDU, VATTAYAR P.O.,
PEECHAD, DEVIKULAM.

5. MRS. KALLIYANI KUNJUKUTTY, AGED 59 YEARS,
W/O.KUNJUKUTTY, PARAKKAL HOUSE, VATTAYAR P.O.,
DEVIKULAM.

6. MRS. LALY MATHEW, AGED 35 YEARS, W/O.MATHEW,
KORUKATTIL VEEDU, VATTAYAR P.O., PEECHAD, DEVIKULAM.

7. MRS. SHEEL ELDHOSE, S/O.ELDHOSE, MULIKKAL VEEDU,
VATTAYAR P.O., DEVIKULAM.

8. N.V.ELDHOSE, NIRAVATH HOUSE, VATTAYAR P.O.,
PEECHAD, DEVIKULAM.

9. BABY THOMAS, S/O.THOMAS, KARIPARAMBIL HOUSE,
KALLAR, VATTAYAR P.O., DEVIKULAM.

10. CHERIYAN K.THOMAS, KILAKKAL HOUSE, KALLAR,
VATTAYAR P.O., PEECHAD, DEVIKULAM.

BY ADV. SRI. P.B.KRISHNAN.

RESPONDENTS: RESPONDENTS 1 TO 8:

1. THE TAHSILDAR, DEVIKULAM TALUK, DEVIKULAM.

2. THE LAND ASSIGNMENT TAHSILDAR, DEVIKULAM.

3. VILLAGE OFFICER, ANAVIRATTY VILLAGE,
ANAVIRATTY, DEVIKULAM.

4. DISTRICT COLLECTOR, IDUKKI DISTRICT,
PAINAVU P.O., KUYILUMALA.

5. REVENUE DIVISIONAL OFFICER, DEVIKULAM.

6. ASSISTANT CARDAMOM SETTLEMENT OFFICER, DEVIKULAM.

7. FIRST MEMBER, BOARD OF REVENUE (LA), TRIVANDRUM.

8. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

BY SENIOR GOVERNMENT PLEADER SRI.P.K.BABU
ADVOCATE GENERAL
ADDL.ADVOCATE GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11/6/2007, THE COURT ON 10/07/2007, DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A. NO. 1058 OF 1999

Dated this the 10th July, 2007

JUDGMENT

Sankaran, J.

The questions of law involved in this Writ Appeal are the following:

1) Whether an encroacher on government land, possession of which was resumed under the Kerala Land Conservancy Act, is entitled to claim lease of that land under the "Rules for Lease on Government Lands for Cardamom Cultivation, 1961" (hereinafter referred to as Cardamom Rules)?

2) Whether a person who has encroached on Government land after 5.6.1961, the date of commencement of the Cardamom Rules, is entitled to the grant of a lease under the Cardamom Rules?

3) Whether a person claiming under an encroacher, on the basis of an agreement for sale, can claim to get a lease under the Cardamom Rules?

4) Whether the Board of Revenue has jurisdiction to pass an order to grant lease by regularization under the Cardamom Rules contrary to Rule 5 of the Rules which provides for public auction of the lands taken possession of by the Government after evicting a lessee or an encroacher?

5) Whether an encroacher on government land is entitled to the relief of a writ of mandamus to get implemented the order passed by a member of the Board of Revenue in contravention of Rule 5?

2. The dispute relates to an extent of 224.21 acres of land in Anaviratty Village in Devicolam Taluk in Kottayam District. In the year 1122 ME (corresponding to 1946-47), M/s.Nellithanam Rubber Produce Company

Ltd., Calicut (hereinafter referred to as 'Company'), approached the Government of Travancore for assignment on registry an extent of 50 acres of land in Sy.No.234 of Pallivasal Village (now Anaviratty Village). The Government of Travancore, as per order dated 13.6.1943, sanctioned to assign 50 acres of land on registry to the Company. Survey was conducted and it was found that the Company was in unauthorized possession of 224.21 acres of land. The Company filed an application before the Government for assignment on registry of the entire extent of 224.21 acres of land. The request of the Company was rejected on the ground that the Company had violated the conditions of the Cardamom Land Registry Rules 1935, under which assignment of lands on registry was ordered to be granted in respect of 50 acres of land. The Company continued its pursuit to get assignment of the land which was declined by the Government of Travancore and the Government of Travancore-Cochin and subsequently by the Government of Kerala. In 1944, the Company was evicted from the land. It would appear that in the next year, the Company encroached upon the land. In the year 1961, the "Rules for Lease of Government Lands for Cardamom Cultivation, 1961" came into force and it was published in the Gazette on 5.6.1961. The Assistant Settlement Officer for cardamom lands, the authorized officer under the Rules, ordered to resume the land from the Company. On 28.8.1980, an extent of 75 acres of land was resumed to the Government from the Company. As it was found that the Company had

unauthorisedly alienated an extent of 65.48 acres in Sy.Nos.234 and 1393 of Pallivasal Village, the said extent was resumed to the Government on 19.9.1987. Thus, a total extent of 140.48 acres was resumed to the Government. The Company was in unauthorized possession of 88.19 acres of land. Proceedings under the Kerala Land Conservancy Act were initiated against the Company. The Company claimed that an extent of 88.19 acres was taken over by M/s.Joseph Estate and Hotels (P) Ltd., from M/s.Nellithanam Rubber Produce Company. In the meanwhile, trees were cut from the 88.19 acres of land and proceedings were initiated against the Company. As per order dated 28.1.1988 (Ext.P22), fine was imposed on the Company. It is stated in Ext.P22 thus: “The encroachment will be evicted”.

3. It would appear that the Company filed an appeal before the Cardamom Settlement Officer, Devicolam and it was rejected on 10.6.1988. Subsequently, on 28.3.1989, an extent of 88.10 acres was resumed to the Government. The said land was entrusted to the Village Officer for protection and maintenance. At the time when the land was resumed on 28.3.1989, eight persons employed by the Company were found residing in the property, occupying extent of five cents each. The proceedings for eviction of the employees were stayed by the Government.

4. The petitioners claim right over the land under agreements dated

10.5.1980 and 26.12.1980 executed between them and the Company, for purchase of different portions of the land. In the Original Petition the petitioners have put forward their right/claim as follows:

> "The petitioners executed two separate Agreements with the Company on 10.5.1980 and 26.12.1980 for the purchase of different portions of this land. Thus from 1980 onwards the petitioners were in exclusive possession and enjoyment of this property. The Company was in possession of this land for more than four decades at the time when the petitioners purchased it in the year 1980. In fact, by adverse possession for more than the prescriptive period the petitioners as well as their predecessors-in-interest namely the Company had perfected their title over this land by prescription."

5. It would appear that in the year 1993, the petitioners had applied before the Special Deputy Tahsildar, Cardamom Settlement, Devicolam for assignment of the land allegedly in their occupation. The Special Deputy Tahsildar, Cardamom Settlement, Devicolam, passed Exts.P18 to P21, P40 and P41 orders dated 22.7.1993 holding that the petitioners are guilty of offence committed under Section 5 of the Kerala Land Conservancy Act and fine was imposed on them. It is further stated in these orders thus: "The encroachment will be evicted." A perusal of Exts.P18 to P21, P40 and P47 would indicate that the total extent claimed by the petitioners is 131.55 acres.

6. Exts.P25 to P27 dated 21.6.1989 and Exts.P28 to P37 dated

8.11.1991 are letters issued by the Secretary to the Government to the petitioners individually. Ext.P25 to P27 issued to petitioners 1, 6 and 8 respectively would indicate that they had submitted a petition dated 20.6.1989 to the Honourable Minister for Revenue and Tourism. Exts.P28 to P37 issued individually to petitioners 1 to 10 respectively would indicate that on 14.10.1991 they had submitted a petition to the Government. Exts.P25 to P37 letters state that the proceedings for eviction of the petitioners from the land were stayed by the Government till the disposal of the petition submitted by them.

7. M/s.Nellithanam Rubber & Produce Company Ltd., did not pay any amount to the Government under the Land Conservancy Rules. Ext.P52 statement prepared and produced by the petitioners to show that they have paid amounts to the Government under the Land Conservancy Rules, would show that as per orders dated 28.1.1988 in LC.1/81, a sum of Rs.3,47,915/- and Rs.2,26,000/- were due from the Company to the Government and that no remittance was made by the Company. There is no case for the petitioners that the Company did pay any amount under the Land Conservancy Act and Rules to the Government at any point of time. Exts.P53 to P59 are produced by the petitioners to show that they have paid some amounts to the Government as land conservancy dues.

8. It is stated in the Original Petition that the petitioners approached this Court in O.P.No.17215 of 1993 complaining that the applications submitted by the petitioners were not considered by the Government. The prayer in O.P.No.17215 of 1993 was to issue a writ of mandamus directing the Government, Tahsildar and the Cardamom Settlement Officer to consider and dispose of the applications dated 14-10-2001 submitted by the petitioners. As per Ext.P64 judgment dated 15-12-1993, this Court directed the Board of Revenue to consider the applications and dispose of the same within a period of six months. By Ext.P1 proceedings dated 25.3.1995 Dr. D. Babu Paul, a member of the Board of Revenue, Thiruvananthapuram, disposed of the petitions submitted by the petitioners, as directed in O.P.No.17215 of 1993. After stating the facts in detail, the Board of Revenue concluded the order thus:

> "O R D E R
>
> The land has been with Nellithanam Rubber Produce Co. Ltd., since 1935. Therefore, the present possessors have derived of right in existence for almost 60 years. I therefore find that they are entitled to regularization of their possession subject to their paying up all dues on the land. Such regularization may be done as lease/assignment to the extent applicable, as per Rules."

9. It would appear that the petitioners moved an application in O.P. 17215 of 1993 which was disposed of earlier, praying for a direction to the Government to dispose of their application dated 14-10-1991, and that application was allowed. The Government passed Exhibit P2 order dated,

which reads as follows:

> "I am to invite your attention to the reference cited. In C.M.P.No. 2607/94 in O.P.No. 1725/93 dated 6-4-94 the Hon'ble High Court has directed Government to dispose of your petition within six months. Accordingly Government have directed the Secretary, Board of Revenue (Land Records) to take immediate action in the matter. In reply the Secretary, Board of Revenue (Land Records) has informed Government that they heard your petition and issued orders in its proceedings No. D.Dis. 10677/90/LRKI dated 25-3-95.
>
> I am directed to inform you that Government do not wish to interfere in to the decision of Board of Revenue in this matter."

10. The prayer in the Original Petition is to issue a writ of mandamus directing the respondents to implement Ext.P1 order dated 25.3.1995 passed by the Board of Revenue and to quantify the dues to be paid by the petitioners, as directed in Ext.P1, and to assign or lease out the land in question in favour of the petitioners as directed in Ext.P1.

11. When the Original Petition came up for admission, a statement was filed by the fifth respondent, Revenue Divisional Officer, Devicolam, wherein it was stated that the land in question is a cardamom hill reserve and the Special Deputy Tahsildar and Tahsildar are not competent to give effect to the orders passed by the Board of Revenue and the Government. It was also stated that the land in question was never included in the list of assignable lands fit for cardamom cultivation.

12. The learned single Judge called for the records from the Board of Revenue. After considering the relevant facts, the learned single Judge felt that "the matter required a detail enquiry at the hands of the Government, since valuable government property worth crores of rupees was involved." The learned single Judge noticed that Ext.P1 order and the subsequent order passed by the Government, Ext.P2, are contrary to the earlier stand taken by the Government, the Board of Revenue and the Cardamom Settlement Officer in various orders. The learned single Judge passed an interim order dated 23.8.1996, the operative portion of which reads thus:

> "I therefore direct the State Government to conduct a detailed enquiry in the manner they deemed fit on all aspects of the matter and submit a report to this Court within one month from today. I also direct the State Government to take immediate steps to realize the amount due from the Nellithanam Rubber Produce Co. Ltd., and also recoup the loss sustained by the Government for not conducting the auction of cardamom from Government property.
>
> Till a final decision is taken by the Government, and report submitted before this Court, there will be stay of Exts.P1 and P2 orders."

13. The learned single Judge, by the judgment dated 7.4.1999 dismissed the Original Petition, which is under challenge in this Writ Appeal. In paragraphs 7 and 8 of the judgment, referring to the result of investigation, it is stated thus:

> "7. State Government after considering the entire matter, felt that the matter required detailed examination by the

> Vigilance Department. Government, therefore, vide their letter No.7418/A2/96/Vig. Dated 23.10.1996 ordered a vigilance enquiry on all aspects of the matter. Accordingly, the Director of Vigilance, Investigation, entrusted the matter with the Deputy Inspector General of Police (Vigilance) to conduct a detailed enquiry and file a report. A detailed enquiry was conducted by the said officer, and report was submitted before the Director of Vigilance, Investigation. Enquiry report reveals serious lapses on the part of certain officers including the first member of the Board of Revenue, who issued Ext.P1 order. Serious allegations have also been raised against the former Deputy Tahsildar, Cardamom Settlement, Devikulam, who issued series of orders in favour of the petitioners herein, against whom some other corruption charges are pending and Crime No.3/95 under Section 13(1)(c) and Section 13(2) of the Prevention of Corruption Act and under Sections 409, 471, 477A IPC were registered by the Vigilance Police Station at Idukki on 22.6.1995.. Report also reveals that two ministers who were in charge at the relevant time have also contributed to a great extent in the failure of the Government machinery to redeem the situation. Vigilance report also recommended registration of crime cases under Section 447, 448, 468, 471, 420, 474, 181, 182 and 193 read with 34 IPC against the petitioners. Report recommended immediate summary and physical eviction of the petitioners and other encroachers from 224.21 acres of land.
>
> All findings and recommendations made by the Vigilance Officer were accepted by the Director of Vigilance, Investigation, who submitted a report dated 6.3.1997 to the Government to take further action in the matter. Counter affidavit filed before this Court as well as the report of the Vigilance Officer point out serious lapses on the part of Officers who dealt with the case and passed orders Exts.P1 and P2 sought to be implemented through this Court. Counsel for the petitioners still pressed for a writ of mandamus to implement those orders, therefore it has become necessary to examine the validity of Exts.P1 and P2 orders."

14. The learned single Judge found that after the land was taken possession of by the Government, some of the petitioners trespassed upon the property on the strength of the stay order granted by the Government.

The learned single Judge also took note of the fact that the Board of Revenue, as per the order dated 4.1.1990 dismissed the revision petition filed by the Company challenging the order of the Cardamom Settlement Officer dated 10.6.1988. The Board of Revenue held that the Company was not eligible to get assignment of the land. Against the order of the Board of Revenue, the Company filed revision before the Government. As per the order dated 16.5.1994, the Government dismissed the revision filed by the Company.

15. All the authorities, including the Government, found that the Company had no right to get assignment or lease of the land in question under the Cardamom Rules of 1961 and those orders have become final. Learned single Judge raised a question for consideration thus:

> "Question therefore to be considered is when all the authorities, including the Government, have found that the company has no right to get assignment either under the Land Conservancy Act or under the Cardamom Rules, 1961 and that order has become final how the petitioners claiming rights under the company have a better right which even the company did not have. Admittedly petitioners are claiming their rights under the company. Petitioners claimed their rights for the first time on 6.4.1989 by filing a petition before the Member, after the land was taken possession of by the Cardamom Settlement Officer on 28.3.89."

Referring to Ext.P1 order passed by a Member of the Board of Revenue (Dr.D.Babu Paul), learned single Judge held that:

> "I fail to see how Member, Board of Revenue could say that petitioners were in possession of the property for over 60

> years, when the Secretary of Board of Revenue and all the authorities have found that petitioners were never in possession and their claim is baseless."

It was found by the learned single Judge, on a careful analysis of the materials on record, that the petitioners encroached upon the property after it was resumed by the Government, only on the strength of a stay order granted by the Government.

16. It is also relevant to note that O.S.No.139 of 1959, Sub Court, Kottayam, was filed by the Company at the time when steps were taken to evict the Company. The trial court decreed the suit. On appeal as A.S.No.208 of 1962, a Division Bench of this Court allowed the appeal and dismissed the suit. It is also relevant to note that the petitioners had filed O.S.No.547 of 1991 on the file of the Sub Court, Thodupuzha for a prohibitory injunction restraining the defendants from evicting the petitioners. The defendants in the suit were the State of Kerala, Divisional Forest Officer, Munnar, Range Officer, Adimali and the Forester. The suit was dismissed as withdrawn.

17. At the time of final hearing, learned single Judge called for the files from the Board of Revenue and perused the files which consisted of more than 1750 pages and two volumes of the enquiry report. After carefully going through the records available before Court and considering all the

contentions put forward by the parties, learned single Judge held that the petitioners have no legal right to claim lease of the land in question and that they are not entitled to the reliefs prayed for in the Original Petition. The learned single Judge also issued the following directions:

> "Government may also deal with the land in question, which is a cardamom land, under the Cardamom Rules, 1961. Government will bestow serious attention to the vigilance report and the recommendation made therein and take further action. Government have a paramount duty to preserve their property. State's interest is the primary consideration, not individual interest. Many of the Officers who dealt with file, failed to safeguard the interests of the State. So found in the Vigilance enquiry as well. It is for the Government to take further follow-up action. I hasten to add that if this is the manner in which Government properties were dealt with by the Board of Revenue, and other officers, at the relevant time, many of the orders passed by them necessarily require a second look, which the Government is perfectly entitled to do so in public interest."

18. It is interesting to note in what manner the petitioners commenced and continued to put forward their claim over the property. The learned single Judge in this regard held as follows: (These findings of fact are not disputed by the counsel for the appellant).

> "I have gone through the files made available by the Government Pleader as well. There is nothing to indicate or suggest that petitioners were in possession of the property, at least from 1980 onwards, as contended by them. They raised their claim for the first time only on 6-4-1989 after obtaining a stay order from the Government and after the entire land was resumed by the Government from the company. Even in their petition dated 20-6-1989, they had no claim for 224.21 acres. Their claim was only three acres, five acres, etc. Now each of the petitioners claims more than 21 acres contending that they are in possession of those properties. Petitioners are relations. The first petitioner is the father, petitioners 2,3 and 8

> are his sons and 7th petitioner is the daughter- in- law of the first petitioner, and sixth petitioner is his daughter. Fourth petitioner is the father-in-law of the 8th petitioner. Their attempt, as a group and as a family, is to get at 224.21 acres of Government land."

19. "Rules for Lease on Government Lands for Cardamom Cultivation, 1961" were framed in exercise of the powers conferred by Section 7 of the Kerala Government Land Assignment Act, 1960. The Rules shall apply to lease of land for cultivation of cardamom in the taluks of Devicolam, Peermade and Udumbanchola. The Rules came into force on its publication in the Gazette on 5.6.1961. Rule 3 of the Cardamom Rules provides that lands in the possession of encroachers who have cultivated the same with cardamom may be leased to them, without auction for a period of twenty years subject to the conditions mentioned in Rule 3. "Encroacher" is defined in Section 2(b) of the Rules, thus: "`Encroacher' means and includes a person who is in unauthorized occupation of the land and has cultivated the same with cardamom". At the time when the Rules were framed, the expression `encroacher' was defined thus: "`Encroacher' means and includes a person who is in unauthorized occupation of the land and has cultivated the same with cardamom on or before 26.4.1957". Subsequently, the words and figures "on or before 26.4.1957" were substituted with the words and figures "on or before 8.1.1959". By Notification dated 4.3.1967 (S.R.O.No.84/67), the words and figures "on or

before 8.1.1959" were omitted. That amendment was to take effect retrospectively from6-11-1965. Thus in the Cardamom Rules, as in force now, the "encroacher" need not be a person who was in unauthorized occupation of the land and had cultivated the same with cardamom on or before 8.1.1959. The question arises whether under the Cardamom Rules, a person can claim the benefit of the Rules at any point of time after encroaching upon the government land; or, whether in order to claim lease under the Cardamom Rules, he should be an encroacher before the commencement of the Rules, namely, 5.6.1961. To decide this question, it is necessary to consider the purpose and object of the Cardamom Rules. The Cardamom Rules are applicable only to certain Taluks. It applies only in respect of the lands fit for cardamom cultivation. A grant of lease under the Cardamom Rules could be made only in favour of a person who has cultivated the land with cardamom. It cannot be said that a person could encroach upon government land at any point of time, cultivate the land with cardamom and claim to get a lease or other benefit under the Cardamom Rules. The Cardamom Rules are not intended to protect such encroachers. On the other hand, the Cardamom Rules are intended to promote cardamom cultivation in certain areas where the land was fit for cardamom cultivation, but nevertheless it was never cultivated with cardamom. The Cardamom Rules could not be treated as a licence to encroach upon government land in certain areas in three Taluks and to clothe with the

encroachers the right to claim lease for twenty years and for renewal thereafter. It cannot be assumed that the Legislature in its wisdom would frame such Rules under the Kerala Government Land Assignment Act to permit citizens to encroach upon government land, promote such encroachment and confer valuable rights on such encroachers. We are of the view that the benefits under the Cardamom Rules could be claimed only by persons who were in occupation of the government land and had cultivated the same with cardamom as on the date of commencement of the Rules, namely, on 5.6.1961. Any other interpretation making the Cardamom Rules as applicable to any encroachment at any point of time would have the result of defeating the very purpose of framing the Rules and would have the result of defeating the Kerala Land Conservancy Act and the Kerala Land Reforms Act.

20. In this context, it is apposite to refer to certain other enactments as well. The Kerala Land Reforms Act, 1963 (Act 1 of 1964) came into force on 1.4.1964. Certain provisions in the Kerala Land Reforms Act came into force on 1.1.1970. Chapter III, namely, “Restriction on ownership and possession of land in excess of ceiling area and disposal of excess land” consists of Sections 81 to 98-A. Section 82 of the Land Reforms Act provides for the ceiling area and the maximum extent of land which an adult unmarried person or a family or a joint family could hold as on

1.1.1970. Section 83 provides that with effect from the date to be notified by the Government, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area. The ceiling area applicable to an adult unmarried person is 7.5 acres and in the case of a family is ten standard acres and not more than fifteen ordinary acres. Even in the case of a family consisting of more than five members, the maximum extent that a family could possess is only twenty acres. Section 85 of the Kerala Land Reforms Act provides for surrender of excess lands. The Kerala Land Reforms Act also provides for assignment of the excess land taken from the land owners. The Kerala Land Reforms Act provides for fixity of tenure on cultivating tenants and for assignment of the lands to such cultivating tenants. However, section 74 prohibits creation of tenancy after commencement of the Act . Sub section (2) of Section 74 provides that any tenancy created in contravention of Section 74 (1) shall be invalid. The provisions regarding ceiling area are not applicable to plantations, in view of Section 81 (e). Section 2 (44) defines plantation as any land used by a person principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon. Section 81 (1) of the Kerala Land Reforms Act provides that the provisions of Chapter III shall not apply to :

> "(a) lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or the Cochin

> Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions if this Chapter.
>
> Provided that the exemption under clause shall not apply to lands owned by the Government of Kerala and held by any person under lease whether current or time expired or otherwise."

Explanation I to this clause states that "lands owned by the Government of Kerala" shall have the same meaning as "Government lands" under sub section (1) of Section 2 of the Kerala Government Land Assignment Act, 1960. Sub- section (3) of Section 81 reads as follows:

> (3) The Government may, if they are satisfied that it is necessary to do so in the public interest-
>
> (a) on account of any special use to which any land is put; or
>
> (b) on account of any land being bonafide required for the purpose of conversion into plantation or for the extension or preservation of any existing plantation or for any commercial, industrial or educational or charitable purpose, by notification in the Gazette, exempt such land from the provisions of this Chapter, subject to such restrictions and conditions as they deem fit to impose."

No notification under Section 81 (1) or 81 (3) has been brought to our notice. Even under a Notification, lands owned by the Government of Kerala and held by any person under lease cannot be exempted from the operation of

the provisions of Chapter III, in view of Section 81(1)(a).

21. The aforesaid provisions of the Kerala Land Reforms Act would clearly indicate that there cannot be a lease after 1-4-1964 in contravention of the provisions of the Kerala Land Reforms Act. A person cannot hold in excess of the ceiling limit after the commencement of the Act. To claim exemption from ceiling, on the ground that the land is a plantation, it should be a plantation before the date of commencement of the Act. If so, how could there be a lease for an area of 25 acres as provided in Rule 3 of the Cardamom Rules, if the encroachment was made at any point of time after the commencement of Rules ? Can a person who encroached upon Government land, say for example, in 1970, and who has cultivated the land with Cardamom, claim for grant of a lease, and that too for an extent of 25 acres ? Would not such lease be against the provisions of the Kerala Land Reforms Act ? Answers to these questions would lead us to the irresistible conclusion that the Cardamon Rules shall not apply to an encroachment after 5-6-1961.

22. The Kerala Private Forests (Vesting And Assignment) Act, 1971 (Act 26 of 1971) provides for vesting in the Government of private forests in the State of Kerala. With effect from the appointed day, the ownership and possession of all private forests in the State of Kerala shall

stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person in any private forest shall stand extinguished. Section 4 of the said Act provides that all private forests vested in the Government under sub-section (1) of Section 3 shall so long as they remain vested in the Government, be deemed to be reserved forests constituted under the Kerala Forest Act, 1961 (Act 4 of 1962), and the provisions of the Kerala Forest Act shall, so far as may be, apply to such private forests. The Kerala Land Conservancy Act, 1957 (Act 8 of 1958) was enacted as a uniform law for checking the unauthorized occupation of Government lands in the State of Kerala. The Land Conservancy Act defines the “property of Government” and provides measures for protection and preservation of the Government lands. The Kerala Government Land Assignment Act, 1960 (Act 30 of 1960) was enacted to regulate the assignment of Government lands. In the light of the aforesaid enactments, it cannot be assumed that the Cardamom Rules would have application and would confer benefit to encroachers of Government land even after the date of commencement of the Rules. The significant presence of the words and figures “on or before 26.4.1957” in the definition of “encroacher” at the time when the Rules were framed and the subsequent amendment substituting the words and figures as “on or before 8.1.1959” would clearly indicate that the Cardamom Rules could be applied only in favour of persons who have encroached upon Government land and

have cultivated the same with cardamom on or before 5.6.1961, the date of commencement of the Rules. Though the words and figures “on or before 5.6.1961” were not inserted, the Rules as originally framed and the amendments thereto would indicate that the Cardamom Rules would have application only in respect of encroachments upto 5-6-1961.

23. It is common knowledge that the land available in the State of Kerala is much less when compared to the other States. The scarcity of land and density of population in the State are undisputed statistical factors. When owners of land are deprived of lands over which they have paramount title, by recourse to ceiling provisions of the Kerala Land Reforms Act and when lands belonging to persons are compulsorily vested in the Government under the provisions of the Kerala Private Forests (Vesting and Assignment) Act, it is puerile to think that the State would encourage encroachment on large tracts of Government lands under the guise of Cardamom cultivation and protect such encroachers by granting lease to them for long terms. The purpose and intent of the Cardamom Rules is not to promote encroachment. The Cardamom Rules are not intended to protect encroachers. It would not be legitimate to think that the State would deprive persons of their lands over which they have title, by recourse to certain set of laws and at the same time, by another set of laws would promote encroachment on Government lands and protect those encroachers by conferring rights on them. This

would lead us to the conclusion that the Cardamom Rules would not be applicable in favour of persons who have encroached upon Government lands after 5-6-1961.

24. The petitioners based their claim under two agreements for sale executed between them and M/s.Nellithanam Rubber Produce Company Ltd., on 10.5.1980 and 26.12.1980 (Exts.P23 and P24). It is stated in the agreements that the Company was in possession since 1935 and that the Company was entitled to get lease under the Cardamom Rules. The consideration under Ext.P23 agreement is Rs.3 lakhs. Ext.P24 states that the consideration thereunder is Rs.5 lakhs. As per these two agreements, an extent of 224.98 acres of land, stated to be a cardamom plantation, has been sold to the petitioners for a total consideration of Rs.8 lakhs. The nomenclature of these documents is “vasthu kaivasavakasa theer agreement”. The recitals in those documents would show that those are assignment deeds. If Ext.P23 and P24 are assignment deeds, those documents would be worthless for want of compulsory registration under Section 17 of the Registration Act. The rights transferred under Exts.P23 and P24 are not alienable rights, the transferor having no right, title or interest capable of being alienated. Therefore, Exts.P23 and P24 are absolutely valueless and the petitioners cannot lay foundation on those documents to claim any right whatsoever under law. Exts.P23 and P24

having been executed after the commencement of the Cardamom Rules, we are of the view that the petitioners cannot claim any protection under the Cardamom Rules. Moreover, alienees of encroachers are not entitled to the grant of lease under the Cardamom Rules.

25. The next question to be considered is whether lands once resumed to the Government could be leased under the Cardamom Rules as indicated in Ext.P1 order and as claimed by the petitioners. Under Rule 3 of the Cardamom Rules, lands in the possession of encroachers who have cultivated the same with cardamom may be leased to them, without auction, for a period of twenty years. The maximum extent that may be leased to a person shall be 25 acres. Rule 3(2) provides for the premium to be collected from the lessee. Sub-rule (5) of Rule 3 provides that on termination of the lease, the lessee shall not be entitled to compensation for improvements, if any, made by him on the land or for refund of the amount already paid by him. Rule 5 of the Cardamom Rules reads thus:

> "5. The area taken possession of by the Government after evicting the lessees or encroachers under the provisions of Land Conservancy Act for the time being in force or otherwise, the area got surrendered under Rules 3 and 4 and also all other lands free of encroachment, may be leased in public auction on the following and the other provisions in these rules,--
>
> (1) The land shall be leased in public auction to the highest bidder with an upset price of Rs.1250 per hectare towards premium.
>
> (2) The maximum extent leased in auction to a single

person shall not exceed 10 hectares:

Provided that in the extent so leased together with the extent of cardamom lands by way of registry or lease (current or time-expired) already held by him shall not exceed 25 hectares:

Provided further that the maximum extent 10 hectares shall be reduced to the extent of land that a person has obtained under rule 3 or 4 or both.

(3) The lease shall be for a period of 20 years.

(4) The annual pattom shall be Rs.250 (Rupees Two hundred and fifty only) per hectare."

26. It cannot be disputed, as it is proved by cogent documentary evidence, that the lands were resumed to the Government. In the case of lands taken possession of by the Government after evicting the lessees or encroachers, Rule 3 cannot have any application. In such cases, only Rule 5 applies and such lands can be leased only by public auction as provided in Rule 5. Therefore, we are of the view that a Member of the Board of Revenue was not legally entitled to suggest, as suggested by him in Ext.P1, that the petitioners are "entitled to regularization of their possession subject to their paying up all dues on the land". It is also suggested in Ext.P1 that such regularization may be done as per Rules. As indicated above, a lease under the Rules could be only by public auction under Rule 5, in so far as the land in question is concerned. Whether the petitioners would be successful bidders or not cannot be said before they participate in the auction. The Member of the Board of Revenue was not, therefore, justified

in saying that such regularization may be made in favour of the petitioners as per Rules. That suggestion/direction is wholly void and without jurisdiction.

27. The petitioners are claiming to be assignees or persons holding an agreement to assign. They do not have any case that they are independent encroachers. They claim their alleged title or right or claim for lease under Exts.P23 and P24. Rule 12 of the Cardamom Rules provides that the lease shall not convey any right to mines or minerals on the land or any right to water power, and the ownership of the land shall continue to vest in the Government and the rights of the lessee shall be strictly limited to those specifically conferred on him by the lease. Rule 13 provides that the lease shall be heritable. Rule 14 provides that the lessee shall not, on his own accord, determine the lease during the currency of the lease and no leasehold or part thereof, shall be alienated without the prior sanction of the District Collector. Rule 16 of the Cardamom Rules states that if a lessee whose lease has expired but who is holding over fails to get the lease renewed or if an encroacher fails to get the land leased in accordance with these Rules, or if any person who is bound to surrender any land under these Rules, fails to surrender the same, such lessee or encroacher, or person, as the case may be, shall be proceeded against under the provisions of the Land Conservancy Act, for the time being in force. The

Scheme of the Rules is such that even a lessee is not entitled to assign the rights under the lease without the prior sanction of the District Collector. When the Rules provide that even a lessee has no right to alienate his rights under the lease, how could an encroacher assign his alleged rights to another person and how could such an alienee or assignee claim right to get lease under the Cardamom Rules. We are of the view that an alienee of an encroacher is not entitled to claim any rights under the Cardamom Rules. Similarly, an encroacher who claims that he has encroached upon the land in the possession of another encroacher, is also not entitled to claim a right to get lease under the Cardamom Rules. The Cardamom Rules provides for the manner in which a lease is to be granted. The Rules also provides for the conditions to be satisfied to enable a person to get lease. After getting lease, the Rules provide for the manner in which the land is to be possessed and enjoyed by the lessee. The Scheme of the Rules being such, it cannot be said that an encroacher has certain rights which even a lessee could not claim under the Rules. We hold that the petitioners have no semblance of a right to claim any right to get lease under the Cardamom Rules.

28. The Cardamom Rules provides under the heading "Machinery and Procedure", the manner in which a lease is to be granted and the authority who can grant the lease. Rules 20 to 28 provide the procedure. Rule 22 provides that a public notice of the proposed lease shall be

published under authority of the Revenue Divisional Officer before sanctioning the lease, whether by public auction or otherwise, inviting claims or objections from the interested persons. 30 days' time is provided for preferring claims or objections. Rule 23 provides for disposal of the claims and objections by the Revenue Divisional Officer after such inspection and enquiry, as may be considered necessary. After disposal of the claims and objections, a notice shall be published by the Revenue Divisional Officer, both in Malayalam and in English, specifying the time and place and the authority conducting the auction and containing the particulars mentioned in Rule 24. Rules 25, 26 and 27 provide for the manner in which the auction shall be conducted. Rule 28 provides for issue of an order of lease in the form in Appendix II, after confirmation of the lease. Rule 29 provides for appeal against such order and Rule 33 provides for the revisional powers of the Government. When the Rules provide for a particular procedure to be followed for granting a lease, we are of the view that a Member of the Board of Revenue was not competent to issue any direction or order, as has been done in Ext.P1. A Member of the Board of Revenue has no jurisdiction under the Cardamom Rules to issue such directions and orders. The procedure provided under the Cardamom Rules for granting lease and for conducting auction, is with a specific purpose. That purpose cannot be defeated by unilateral decision by a Member of the Board of Revenue and thereby confer rights on encroachers who do not have any semblance of a right to get lease

of Government land under the Cardamom Rules. We concur with the reasonings and conclusions arrived at by the learned single Judge that the Member of the Board of Revenue was not competent to pass Ext.P1 order conferring rights on the petitioners.

29. The next question to be considered is whether the petitioners are entitled to get the relief of a writ of mandamus. Writ of mandamus shall be issued in favour of a person who has got a legal right. It cannot be issued in favour of a person who does not have any legal right. There must be a corresponding duty on the statutory authority to do a particular thing in a particular manner and that he must have failed to perform his legal duties. Only in such a case, exercising jurisdiction under Article 226, the High Court will issue a writ of mandamus. In the case on hand, not only that the petitioners do not have any legal right to claim any lease under the Cardamom Rules, but also there is no duty cast on any of the respondents to grant lease in favour of the petitioners. Therefore, we hold that the petitioners are not entitled to get the relief of a writ of mandamus.

30. Learned counsel for the petitioners, relying on the decision in **State of U.P. and another** v. **Sathyanarain Kapur** ((2004) 8 SCC 630), contended that the learned single Judge erred in passing the interim order dated 23.8.1996 directing an enquiry and in considering various aspects

which were not relevant for consideration. We do not think that, in the facts and circumstances of the case, the decision in (2004) 8 SCC 630 would apply. Learned single Judge has disposed of the Original Petition based on facts and materials available on record. Conclusions have been arrived at only for the purpose of disposal of the case in the light of the reliefs claimed by the petitioners. We concur with the conclusions and findings arrived at by the learned single Judge.

31. The Company's claim for lease was rejected by the Cardamom Settlement Officer on 10.6.1988. The appeal filed by the Company before the Board of Revenue was rejected by order dated 4.1.1990. The revision, at the instance of the Company, was dismissed by the Government as per order dated 16.5.1994. The claim made by the Company was also rejected by the decision of the High Court in A.S.No.208 of 1962 by which the suit filed by the Company as O.S.No.139 of 1959 was dismissed. The aforesaid decisions have become final. In these circumstances, the learned single Judge was right in holding that a Member of the Board of Revenue could not have passed an order like Ext.P1 conferring rights on the petitioners to get lease of a Government land under the Cardamom Rules.

32. The contention of the petitioners that they have perfected title by adverse possession is also without merit. The facts evident from records

would indicate that the Government resumed the land from the Company on 28-8-1980, 19-9-1987 and 23-8-1989. The Company was never in uninterrupted possession. Various proceedings were initiated against the Company and the petitioners under the Kerala Land Conservancy Act. The required ingredients to constitute adverse possession are conspicuously absent in the case. Moreover, the contention that the petitioners have perfected title by adverse possession does not co-exist with their claim for lease under the Cardamom Rules. If the petitioners prove that they have perfected title by adverse possession, they would get title to the property divesting the title of the owner. Such persons cannot claim lease from the owner who lost title by adverse possession.

33. Above all, we are of the view that a person has no legal right to claim that lease shall be granted to him under the Cardamom Rules. The expression used in Rule 3 is “lands in the possession of encroachers who have cultivated the same with cardamom **may** be leased to them”. There is no duty cast on the authorities to grant lease to the encroachers. Even if the authority is satisfied that the person who claims to be an encroacher has cultivated the lands with Cardamom, that does not preclude the authorities under the Kerala Land Conservancy Act to take proceedings under the Act. No encroacher can claim any vested right to get a lease of the land encroached upon by him.

34. The learned counsel for the appellants-petitioners contended the Government cannot go back from Exhibits P1 and P2 orders and that the power of review vested in the Government under Rule 33 of the Cardamom Rules cannot be exercised after two years of passing Exhibit P1 order. The counsel argues that Ext. P1 is therefore unassailable at this point of time. Rule 33 of the Cardamom Rules reads thus:

> "The Government shall be competent to revise, cancel, or alter on its own motion or otherwise, any decision made or order passed by the Revenue Divisional Officer, or District Collector, or Board of Revnue under these rules:
>
> Provided that no proceeding in this behalf shall be initiated by the Government after the expiry of the two years from the date of such decision or order, and no such decision or order shall be set aside or modified by them without giving the party or parties affected thereby reasonable opportunity for representing their case."

We are not inclined to accept the contention of the counsel for the appellant. We are of the view that Rule 33 would stand against the case of the appellants. Challenging the order dated 10-6-1988 passed by the Cardamom Settlement Officer, the Company had filed Appeal before the Board of Revenue. The Board of Revenue rejected the appeal filed by the Company, by its order dated 4-1-1990. On Revision by the Company, the Government confirmed the order passed by the Board of Revenue. Therefore, the Government could not approve Exhibit P1 order dated 25.3.1995, which would have the effect of reviewing the order dated

4.1.1990 passed by the Board of Revenue and the order passed by the Government. Therefore, we are inclined to hold that Exhibit P2 order passed by the Government is in violation of Rule 33 of the Cardamom Rules.

35. The learned counsel for the Appellants raised a contention that the Government could invoke the power under rule 34 of the Cardamom Rules. Rule 34 is as follows:

> "The Government shall, for sufficient reasons, be competent to dispense with any provision of these rules and grant leases, in any manner they choose, imposing any terms or conditions whether contemplated by these rules or not."

We are of the view this power vested in the Government would not empower the Government to do away with the provisions of the Cardamom Rules and grant lease as they like. By invoking Rule 34, the Government cannot grant lease to a person who is disentitled to get a lease under the Cardamom Rules. Government can grant lease to a person, by invoking Rule 34, only in favour of a person who is entitled to be granted a lease under the Cardamom Rules. Government could only alter the terms and conditions in granting lease. There must be sufficient reasons to invoke Rule 34. The expression "in any manner they choose" in Rule 34 can have relation only with the manner of granting leases. The expression "dispense with any provision of these Rules" occurring in Rule 34, could only relate to the manner in which a lease could be granted and in respect of the terms and conditions thereof. The Government shall have no power to grant a lease, invoking Rule 34, contrary to the basic structure and the essential conditions

of the Cardamom Rules.

The Appellants are not entitled to any relief in the Original Petition. The learned single Judge has rightly dismissed the Original Petition. No interference is called for and the Writ Appeal is accordingly dismissed with costs, which we quantify at Rs. 10,000/-.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

W.A.NO. 1058 OF 1999

JUDGMENT

10th July, 2007